United Nations CAT/C/52/D/497/2012*

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
12 June 2014

Original: English

Committee against Torture

Communication No. 497/2012

Decision adopted by the Committee at its fifty-second session, 28 April–23 May 2014

Submitted by:	Rasim Bairamov (represented by counsel)
Alleged victim:	The complainant
State party:	Kazakhstan
Date of complaint:	6 May 2011 (initial submission)
Date of present decision:	14 May 2014
Subject matter:	Failure to carry out a prompt and impartial investigation into torture allegations, to bring perpetrators to justice, provide full and adequate reparation, forced confession; inadequate health care
Procedural issues:	Level of substantiation of claims
Substantive issues:	Torture; severe pain or suffering; effective measures to prevent torture; prompt and impartial investigation wherever there is reasonable ground to believe that torture has been committed; right to complain to, and to have one's case promptly and impartially examined by competent authorities; right to adequate compensation, forced confession, inadequate health care
Articles of the Convention:	1; 2; 12; 13; 14; 15 and 16

* Reissued for technical reasons on 3 July 2014.

GE.14-07296

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-second session)

concerning

Communication No. 497/2012

Submitted by:	Rasim Bairamov (represented by counsel)
Alleged victim:	The complainant
State party:	Kazakhstan
Date of complaint:	6 May 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 May 2014,

Having concluded its consideration of complaint No. 497/2012, submitted to the Committee against Torture by Mr. Rasim Bairamov under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1. The complainant is Mr. Rasim Bairamov, a Kazakh national born on 10 July 1982. He claims to be a victim of a violation by Kazakhstan[1] of his rights under articles 1 and 2, paragraph 1; 12; 13; 14; 15 and 16, of the Convention against Torture. He is represented by counsel.[2]

The facts as submitted the complainant

2.1 On 17 July 2008, at around 9 a.m., two persons in civilian clothes apprehended the complainant and dragged him into a car. The complainant tried to resist, but stopped when he saw a gun on the belt of one of his assailants. He was brought to the Criminal Department of the Ministry of Internal Affairs of Rudny City (CDIA), where he was informed that witnesses had testified that he, together with one B., had robbed a store on

[1] Kazakhstan made the declaration under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 21 February 2008.

[2] A power of attorney, dated 10 February 2011 and signed by the complainant, is attached to the complaint.

28 June 2008. When he denied any involvement in the crime, he was beaten by two police officers, K. and O.

2.2 On the evening of 17 July 2008, the complainant's sister brought him some food and cigarettes and noticed bruises and abrasions on his body. When she visited him the next day, she saw also bruises on his nose and on his face, as police officers had beaten him in the face with a purse, prior to her visit, in an attempt to obtain his confessions in the robbery. When the complainant's sister left, a senior investigation officer told three police officers to stay with the complainant and the other suspect overnight and to get their confessions.

2.3 The complainant was detained for two and a half days at the CDIA without official registration, identification, and without access to a lawyer. During interrogations, police officers tried to force him to confess guilt under torture. Interrogations were conducted continuously in the absence of a lawyer and the complainant was deprived of food and sleep.

2.4 During that night, the complainant could hear the screams of B., who was beaten by police officers. At some point, the police officer O. ran into the room, kicked the complainant's leg and said that B. confessed, and that it was his turn to confess. Shortly after, the complainant was taken to the office where B. was beaten and saw him there, all bruised and exhausted.

2.5 The complainant was hit with a thick folder on the head by a police officer. Another police officer, K., grabbed him by his hair and began to shout curses. Then, he was seated on a chair and one officer kicked him repeatedly in the upper part of his leg. The police officers hit him on the head, kidneys, dragged him by his hair along the corridor, kicked and beat him all over the body, knocked him out of his chair, deprived him of sleep, of food and drink for more than two days. When the complainant lost consciousness, they poured water on him. He was also threatened with sexual violence if he did not confess. One of the officers did not torture him, but was giving instructions to the other two officers: "beat him, no need to talk to him".

2.6 After the beatings, during the night of 19 July 2008, the complainant was presented to an investigation officer, for further questioning. He replied incoherently, as he wanted to sleep and was in pain. On the same day, at 11.40 pm, the complainant and B. were placed in a temporary detention facility. No medical examination was carried out upon admission, and no medical assistance was provided, despite the fact that the complainant had bruises on his back, chest, legs and arms, and there were bumps on his head.

2.7 The complainant was warned that someone would visit him, and that he should repeat the testimony acceptable to the police, otherwise torture would continue. One person indeed visited him, who later turned out to be a prosecutor of Rudny. The visitor did not identify himself and "was not interested in how" the complainant "was mistreated by the police officers". In the morning of 20 July 2008, the investigating officer brought a written testimony to be signed; on this occasion, the complainant saw the *ex officio* lawyer assigned to him for the first time. The lawyer advised him to sign the documents in order to obtain mitigating circumstances. He explains that he signed because he was in pain.

2.8 On 20 July 2008, the complainant was placed in custody in Rudny. His mother saw him for a few minutes on 24 July 2008, under the supervision of the detention facility's officials. She saw her son with bruises on the bare parts of his hands. She advised him to have his injuries documented, but he replied that this would worsen his situation.

2.9 On 1 August 2008, the complainant was transferred to the temporary detention facility No. 161/1 of Kostanai (IVS). Upon arrival, he was examined by a medical doctor who noticed that he had bruises on his body and refused to receive him in the detention

centre, saying that the complainant would later claim that he was ill-treated in the IVS. The official, accompanying the complainant, was very angry, and the complainant was forced to say that he sustained those bruises when he hit the bed in his previous cell. Only then he was admitted in the IVS.

2.10 On 5 August 2008, three weeks after the complainant's arrest, his mother saw numerous bruises on various parts of his body during a search in the visiting room of the IVS. She filed a complaint to the IVS administration, requesting them to issue a report about the complainant's medical condition at the time of admission to IVS. She was provided a note to the effect that the complainant had no claims and that no bodily injuries were disclosed. The author's mother filed another request for a medical report. She was provided with the same note, with a remark "repeated" to the effect that the complainant had no complaints whatsoever at the time of admission, and no injuries were disclosed upon his admission.

2.11 The complainant filed the first complaint of torture to a prosecutor of Rudny during his visit to the IVS. As a result, the pressure from police increased. Subsequently, on 12 August 2008, he lodged a complaint with the Prosecutor's Office of the Kostanai Region. On 19 August 2008, his mother also filed a complaint to the Prosecutor's Office of the Kostanai Region.

2.12 On 5 September 2008, the Prosecutor's Office of Rudny informed the complainant's mother that her complaint was forwarded to the Department of Internal Security of the Department of Internal Affairs of the Kostanai Region (RDIA), for further action. The RDIA forwarded the complaint for examination to the CDIA. On 19 September 2008, the CDIA refused to initiate criminal proceedings against the police officers due to lack of evidence.

2.13 On 7 October 2008, the complainant's mother appealed against the decisions of both the CDIA and the Rudny Prosecutor's Office to the Prosecutor's Office of the Kostanai Region. On 20 October 2008, the Rudny City Prosecutor's Office upheld the CDIA's refusal to initiate criminal proceedings. This decision was quashed by the Regional Prosecutor's Office on 17 November 2008, due to incomplete investigation. The case was then referred back to the RDIA, for further investigation.

2.14 On 21 October 2008, the Rudny City Court found the complainant and B. guilty of having committed a crime under article 179, paragraph 2 'a', of the Criminal Code (robbery committed in a group) and sentenced the complainant to five years of imprisonment with confiscation of property. The court retained his initial confessions. Although he retracted his confessions during the trial and pointed out the ill-treatment inflicted on him, the court found his claims unfounded and not corroborated by any objective evidence. On appeal, the complainant cl imed, inter alia, that his sentence was based on his forced confessions. The appeal was, however, dismissed by the Kostanai Regional Court on 2 December 2008. On 11 December 2008, he requested the Regional Prosecutor's Office to lodge a protest motion under the supervisory review proceedings against the decision of the Kostanai Regional Court, but the request was rejected. On 23 December 2008, he filed another application for supervisory review, to the Kostanai Regional Court, which was rejected on 12 January 2009. A further supervisory review application was rejected by the Supreme Court on 9 June 2009.

2.15 On 27 December 2008, the complainant started serving his sentence at the Colony No. 161/7. Each time when his mother visited him there, she noticed that his state of health was deteriorating. On 12 November 2009, he was brought unconscious to the Colony's Medical Unit. In December 2009, he was diagnosed with pneumonia. However, the medication prescribed by the medical doctor and delivered by the complainant's mother, gave no results. He received treatment at the Colony's Medical Unit until 28 October 2010

and only then he was transferred to the Colony No. 164/8 for detainees infected with tuberculosis.

2.16 On 21 November 2008, the complainant's mother complained to the RDIA pointing to a number of deficiencies of the investigation concerning the complainant's ill-treatment by the CDIA officers, inter alia, noting their failure to interview the complainant and to take statements from witnesses. On 5 December 2008, the RDIA decided not to initiate criminal proceedings thereon.

2.17 On 8 January 2009, the Rudny City Prosecutor's Office quashed the CDIA's refusal of 9 November 2008 to initiate criminal proceedings and sent the materials back for further investigation. The investigation was again carried out by the CDIA, where the complainant was ill-treated. On 20 December 2008, the CDIA again refused to initiate criminal proceedings. On 30 April 2009, the decision was reversed by the Rudny City's Prosecutor and the case materials were sent back for additional investigation. On 12 March 2009, the CDIA refused to have criminal proceedings initiated.

2.18 On 25 May 2009, the CDIA again refused to initiate criminal proceedings. This refusal was again quashed by the Rudny City Prosecutor on 17 June 2009. On 29 September 2009, the complainant's mother filed an application with the Head of the Department of Internal Affairs of the Kostanai Region, requesting that the investigation be transferred to another body, claiming that CDIA officers had an interest in the case, and that the investigation lacked impartiality and was superficial. The case was then transferred from the Department of Internal Security to the RDIA, which, however, was under the same chain of command. After a summary questioning of a number of police officers, the RDIA refused to initiate criminal proceedings due lack of evidence.

2.19 On 28 April 2010, the complainant's mother complained about the delayed investigation regarding her son's ill-treatment to the Ministry of Internal Affairs in Astana. The fact that the investigation was delayed for 21 months, and the violations committed by police officers were rendered public by the complainant's mother during a press conference organized on 12 May 2010. On 17 May 2010, the Prosecutor's Office of Kostanai Region upheld the decision of the Department of Internal Security of 1 March 2010[3] not to institute criminal proceedings against the police for of lack of evidence. The decision was based on the complainant's sentence handed down by the Rudny City Court on 21 October 2008, where the court found the complainant's allegations of forced confessions unfounded.

The con.plaint

3.1 The complainant claims that the treatments inflicted on him to force him to confess guilt shortly after his apprehension, in the absence of a lawyer, amounts to torture within the meaning of article 1 of the Convention. He was beaten for a long period of time and sustained injuries of different severity. Moreover, during long interrogations, he was deprived of food, drinking and sleep for two days, which exacerbated his suffering.

3.2 Further, he claims that the State party failed to establish adequate safeguards against torture and ill-treatment. His apprehension and subsequent detention by the police were not registered and he had no access to a lawyer after his apprehension, which facilitated his torture at the hands of police, contrary to article 2 (1) of the Convention. Relatives and other people have seen him before his apprehension and they can confirm that he had no injuries. The injuries he sustained remained undocumented because he was intimidated and forced to affirm that they were not the consequence of beatings by police officers.

[3] The complainant had no knowledge of this decision and has never received a copy of it.

3.3 The complainant also submits that the State party failed to conduct a prompt and adequate investigation for purposes of articles 12 and 13 of the Convention. The CDIA and the RDIA had repeatedly refused to initiate criminal proceedings; these refusals were subsequently quashed by the Prosecutor's Office on a number of occasions. No appropriate investigation was carried out, as interested police officers failed to conduct a proper inquiry. The investigation into his allegations lasted for about two and a half years and was conducted neither by an independent nor an impartial body. In addition, the investigation was carried out by the police department, where the torture in question had taken place. Further, the effectiveness of the investigation was also compromised by the reluctance of the authorities to obtain objective evidence and make unbiased conclusions.

3.4 Furthermore, the complainant claims that the right to compensation for harm caused by the actions of law enforcement officials is recognized only after conviction of the officials in criminal proceedings. The absence of criminal proceedings deprived him of the possibility of filling a civil claim for compensation, in violation of article 14 of the Convention.

3.5 He submits that, contrary to the guarantees under article 15 of the Convention, his forced confessions were retained by the court when establishing his guilt.

3.6 He further claims that his health condition requires specialized examination and adequate medical treatment that he cannot get in a regular prison as he contracted infiltrative tuberculosis complicated with tuberculosis pleurisy, which amounts to a violation of his rights under article 16 of the Convention.

State party's observations on admissibility and merits

4.1 By note verbale of 14 June 2012, the State party submitted its observations on admissibility and merits. It notes that on 11 May 2010, the Department of Internal Affairs of the Kostanai Region received a claim from the complainant's mother about her son's ill-treatment by the CDIA's police officers K., O. and S. On 17 May 2010, the investigator T. V. of the RDIA decided not to initiate criminal proceedings as a decision refusing to institute such proceedings had already been adopted thereon and it had not been quashed. In this regard, the State party notes that the complainant's mother had previously submitted a number of similar complaints regarding her son's ill-treatment to the Department of Internal Affairs of the Kostanai Region and to the RDIA. All her complaints were duly examined and the national authorities did not establish that the complainant had been subjected to physical or psychological ill-treatment with the aim of extracting his confessions. Consequently, a number of decisions were adopted refusing to have criminal proceedings initiated.

4.2 The State party further submits a brief overview of the facts concerning the criminal proceedings against the complainant and his co-accused B. It notes that on 21 August 2008, the Rudny City Court found the complainant and B. guilty of having committed a crime under article 179, paragraph 2 'a', of the Criminal Code (robbery committed in a group) and sentenced them to five years of imprisonment. Both the complainant and B. appealed the decision of 21 August 2008, but their appeal was rejected by the Kostanai Regional Court on 2 December 2008. On 23 December 2008, the complainant's counsel requested the Kostanai Regional Court to review the decisions of 21 August and 2 December 2008 within supervisory review proceedings. This request was dismissed as unfounded on 12 January 2009. Thereafter, a complaint concerning the lower courts' decisions was submitted within the supervisory review proceedings to the Supreme Court; but it was dismissed on 9 June 2009 as manifestly ill-founded.

4.3 The State party maintains that the complainant's claims under articles 1; 2; 12; 13; 14; 15 and 16 of the Convention against Torture are inadmissible as the allegations

concerning his ill-treatment aimed at obtaining his forced confessions are not corroborated by any evidence and, therefore, are unfounded.

4.4 The State party notes that the complainant confessed guilt during the pre-trial investigation. The complainant and B. both admitted that they decided to rob the shop in question on 28 June 2008. On the same day, they entered the shop, B. ordered the shopkeeper to lie on the ground and they stole 36,000 tenge and three bottles of beer. However, later in the course of the pre-trial investigation, both co-accused changed their initial confessions and started denying any involvement in the robbery. The State party further notes that the complainant's guilt was duly established during the criminal proceedings and in court. The court also examined his allegations of ill-treatment during the pre-trial investigation, but found them to be groundless. In this connection, the State party points out the statements of the victims and several witnesses confirming that the complainant and B. did rob the shop on 28 June 2008. It also points out that during the court proceedings, the police officers K. and O. testified that the complainant, voluntarily, and in the presence of his counsel, confessed to having committed the robbery, and he also confessed guilt during a cross-examination between him and the victims.

4.5 The State party further rejects as ill-founded the claims on ineffective and prolonged investigation regarding the complainant's alleged ill-treatment and the authorities' failure to ensure compensation for harm caused by officials. It reiterates that on 11 May 2010, the Department of Internal Affairs of the Kostanai Region received the mother's complaint about the complainant's ill-treatment by the CDIA. During the pre-investigation examination, on 14 May 2010, the complainant requested to terminate any further investigation into his mother's complaint, as he had not been subjected to ill-treatment; he did not contest the court's judgment and the sentence and he had no claims against anyone. Consequently, on 17 May 2010, the investigator T.V. of the RDIA decided not to initiate criminal proceedings as a decision refusing to institute proceedings had already been adopted in that regard and it had not been quashed. The complainant's mother's previous complaints were examined, but were not confirmed. Consequently, a number of decisions were adopted refusing to initiate criminal proceedings. All decisions were adopted within the time limits as set out in national laws.

4.6 As to the issue of redress, the State party points out that under article 42 of the Criminal Procedure Code, when a court decides to partly or fully rehabilitate a person, the institution responsible for performing criminal proceedings is obliged to acknowledge that person's right to compensation. A partly or fully rehabilitated person is personally informed of the court's decision and s/he is informed of the procedure for compensation of damages. In this connection, the State party notes that the national authorities established that the complainant was not subjected to any physical or psychological ill-treatment. Moreover, the courts did not acquit him, nor was a decision adopted to terminate the initiated criminal proceedings against him or to annul any decision adopted within the criminal proceedings, as unlawful. Therefore, there were no grounds for compensating him.

4.7 The State party maintains that the complainant's claims that he did not have access to effective domestic remedies and that his forced confession was used by the court as evidence are manifestly ill-founded. The complainant and his defence appealed all judicial decisions adopted in his case, up to the Supreme Court. In particular, the Rudny City Court of the Kostanai Region concluded that, inter alia, the complainant's confessions, as well as investigation actions confirming his participation in the robbery on 28 June 2008, were permissible and acceptable, and that the aggregated evidence as a whole was sufficient to establish his guilt in the robbery. In addition, the judgment of 21 August 2008 of the Rudny City Court of the Kostanai Region was based not only on the complainant's confession, but also on a multitude of other evidence, all examined by the court.

4.8 As to the alleged failure to provide the complainant with medical treatment after his ill-treatment that aggravated his health status, the State party submits that, according to the reports of the Head of the Criminal Colony UK-161/1 of 26 November and of 10 December 2008, upon the complainant's arrival at the colony on 1 August 2008, during his medical examination he did not complain about any injuries. In addition, no bodily injuries were revealed on him. Further, the fact that he contracted infiltrative tuberculosis complicated with tuberculosis pleurisy can in no way be linked to the ill-treatment alleged.

4.9 In light of the above considerations, the State party maintains that the complainant's allegations that he was subjected to ill-treatment by the CDIA police officers and his claims under articles 1; 12; 13; 14; 15 and 16 of the Convention are manifestly ill-founded and inadmissible.

Complainant's comments on the State party's observations on admissibility and merits

5.1 On 23 September 2012, the complainant briefly reiterated the circumstances of his apprehension on 17 July 2008. He further notes that, according to the State party's submission, the national authorities received his mother's initial complaint concerning his ill-treatment by the police officers of the CDIA on 11 May 2010 only. In this regard, he notes that, in its observations, the State party refers to her complaint of May 2010; however, her first complaint regarding his ill-treatment was submitted already on 5 August 2008, after she visited him at the temporary detention facility and saw bruises on his body. The complainant himself lodged his first complaint to the Prosecutors Office of Rudny City and, thereafter, to the Regional Prosecutor's Office of the Kostanai Region on 12 August 2008.

5.2 The complainant further points out that the State party has not provided any information as to what exact actions had been carried in the context of examination of his or his mother's complaints concerning his ill-treatment. He also notes that the examination of his ill-treatment claim lasted for more than two years. Following the CDIA's refusal to initiate criminal proceedings, the complaints concerning his ill-treatment were examined by the Office of Internal Security of the Department of Internal Affairs, which concluded that mere allegations of ill-treatment were insufficient grounds for initiating criminal proceedings. The complainant reiterates that the authorities failed to conduct an effective investigation as, for example, the place where he was ill-treated was not examined; the responsible police officers were not cross-examined; confrontations were not carried out; no witnesses were questioned; and no forensic examinations were performed. The complainant notes that the lack of a complex investigation into his ill-treatment demonstrates the superficial approach of the authorities to such examinations. In addition, the complainant had no access to the examination materials.

5.3 The complainant points out that, in 2008, the Committee noted, regarding the State party, that "the preliminary examinations of reports and complaints of torture and ill-treatment by police officers are undertaken by the Department of Internal Security, which is under the same chain of command as the regular police force, and consequently do not lead to prompt and impartial examinations".[4] The Committee also has criticized the lack of independent bodies to investigate acts of torture, in particular with regard to torture by the police, because the police is usually the same agency that is tasked to conduct investigations into allegations of torture.[5] The complainant also points out that, according to

[4] Concluding observations regarding the second periodic report of Kazakhstan, United Nations Document CAT/C/KAZ/CO/2, 12 December 2008, para. 24.

[5] *Ibid.*

the Committee, in general, investigation of torture by the police should not be conducted by police or under its auspices.

5.4 The complainant further notes that he was questioned by the "advisory council" of the Department of Internal Affairs about his ill-treatment only after a press conference was held on 12 May 2010. He notes that he was questioned by the advisory council, on 14 May 2010, with the purpose of obtaining information for the authorities to justify the delay (21 months) regarding the investigation of his torture allegations. He submits that one day before the council's visit, he was summoned to the "Head of the Operative Division" A.S., who told him that if he wanted to continue serving his sentence without problems, he should not complain to the council. As a result, on 14 May 2010, before the advisory council, the complainant first started to describe his ill-treatment suffered naming the police officers responsible; shortly after, however, fearing for his safety, he revoked all his previous complaints concerning his ill-treatment, contending that in fact no one ever beat him. This statement was video recorded by a representative of the advisory council and transmitted to mass media. On this occasion, he signed a statement that he had not been subjected to ill-treatment and that he had no further complaints.

5.5 On 5 May 2011, the complainant was released on parole due to his health status. He notes that only following his release, he was able to provide details regarding the context in which he made his statement of 14 May 2010, which was submitted by the State party together with its observations, whereby he revoked his ill-treatment complaints. He adds that, in particular, at the time, the Deputy Head of the Operations and Regime Work demanded that the complainant rejected all his complaints against the CDIA or he would experience "all the charms of the Colony". He points out that he was completely dependent on the mercy of the administration of the Kushmurunskiy Colony No. 161/4, which is known for its high rate of inmate deaths and, therefore, he decided to sign the statement.

5.6 The complainant adds that he is ready to undergo a polygraph (lie detector) test concerning the ill-treatment suffered. He reiterates that every detainee is dependent on the prison administration and that he had been threatened by the Head of Operations A. and his Deputy B. and asked to revoke his complaints against the CDIA. Upon arrival at the Colony No. 161/1 on 27 December 2008, he was held in the quarantine unit for 10 days, in harsh conditions and he was ill-treated there. Thereafter, he was assigned to the squad No. 9 where his ill-treatment continued. Due to harsh conditions and poor nutrition, he got infected with tuberculosis and was placed in the Medical Unit on 12 November 2009. He was treated there until 28 October 2010; however, the health care provided was inadequate. Since his release on 5 May 2011, he is still undergoing treatment and is registered in a clinic specializing in tuberculosis.

The parties' further submissions

6.1 On 11 January 2013 and 19 June 2013, the State party reiterated that the complainant's allegations about his ill-treatment by the police officers of the CDIA are groundless. In the context of the present complaint, the State party has not violated any provisions of the Convention and, therefore, the present communication is inadmissible as manifestly ill-founded.

6.2 On 6 March 2013, the complainant noted that the State party has submitted no new information or argumentation concerning the admissibility and merits of his complaint, but merely maintains that he was not tortured while in police detention. He reiterates his previous claims, requests the Committee to examine the admissibility and merits of the complaint, and lists recommendations which the State party should be invited to implement.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a complaint, the Committee must decide whether or not it is admissible under article 22 of the Convention.

7.2 The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.3 The Committee further notes that the State party does not dispute that domestic remedies have been exhausted[6] and, thus, it is not precluded by the requirements of article 22, paragraph 5 (b), of the Convention, from examining the communication.

7.4 The Committee has noted the complainant's claims under article 16 of the Convention concerning the allegedly inadequate health care provided to him, and of the poor conditions of detention while he was in the prison colony. It observes, however, that, in support of his allegations, the complainant submits no medical documentation or other evidence concerning the medical treatment he was provided with while in detention, regarding the deterioration of his state of health or about his eventual complaints regarding the allegedly inadequate health care provided. Consequently, and in the absence of any other pertinent information on file, the Committee considers that this part of the communication is insufficiently substantiated for the purposes of admissibility, and declares it inadmissible under article 22, paragraph 2 of the Convention.[7]

7.5 Further, the Committee notes the complainant's allegations under articles 1; 2; 12; 13; 14 and 15 of the Convention. It notes that the State party challenges their admissibility, as manifestly unfounded. In light of the material before it, however, the Committee considers that the arguments put forward by the complainant raise substantive issues, which should be dealt with on the merits.[8] Accordingly, the Committee finds no further obstacles to the admissibility. Accordingly, it declares this part of the communication admissible and proceeds with its consideration on the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

8.2 The Committee notes that the complainant has alleged a violation of article 1 in conjunction with article 2, paragraph 1, of the Convention, on the grounds that the State party failed in its duty to prevent and punish acts of torture. These provisions are applicable insofar as the acts to which the complainant was allegedly subjected should be considered as acts of torture within the meaning of article 1 of the Convention.[9] In this respect, the Committee notes the complainant's detailed description of the treatment he was allegedly subjected to by the police officers of the CDIA in July 2008 immediately after his

[6] See, e.g., communication No. 225/2003 (CAT/C/32/D/225/2003), *R.S. v. Denmark*, decision of 19 May 2004, para. 6.1.

[7] See, e.g., communication No.434/2010 (CAT/C/51/D/434/2010), *Y.G.H. et al v. Australia*, decision of 14 November 2013, para. 7.4.

[8] For a similar approach, see, e.g., communication No. 435/2010 (CAT/C/49/D/435/2010), *G.B.M. v. Sweden*, decision of 14 November 2012, para. 6.3.

[9] See communication No. 269/2005 (CAT/C/39/D/269/2005), *Ali Ben Salem v. Tunisia*, decision of 7 November 2007, para. 16.4.

unrecorded apprehension and detention, in the absence of a defence lawyer, to force him to confess guilt in a robbery. In addition, the complainant has provided the names of the police officers who had allegedly ill-treated him to the point he confessed guilt. The Committee considers that this treatment in question can be regarded as amounting to torture, which is inflicted deliberately by officials with a view to obtain forced confessions. The Committee also notes that the State party merely denies that the complainant was ill-treated at all, without however, providing sufficient explanations as to how adequately, in practice, had the authorities addressed the complainant's and his mother's claims regarding the ill-treatment/torture suffered.

8.3 Although the complainant has not submitted any medical report documenting the injuries he sustained as a result of ill-treatment by the police officers of the CDIA, the Committee notes that he made consistent statements about his ill-treatment before the national authorities, including during the criminal proceedings, in court, up to the highest jurisdiction. The Committee further notes the complainant's statement that he was not provided with any medical assistance upon his placement in the temporary detention facility and that when he arrived at the Colony No. 161/1 on 1 August 2008, the medical personnel there refused to admit it or to document his bruises in his medical records. The Committee notes that the State party has not specifically refuted these allegations. In these circumstances, the Committee decides that due weight must be given to the complainant's allegations, in particular, given that only the penitentiary medical personnel were available to him and he could not approach an independent medical expert, who could record/document his injuries. Moreover, the Committee notes the complainant's unrefuted allegations to the effect that he was neither questioned, nor did he undergo a medical-forensic examination when the State authorities received his or his mother's initial complaints about the ill-treatment suffered. As to the State party's submission that, on 14 May 2010, the complainant signed a statement revoking his complaints against the CDIA police officers, the Committee takes note of the complainant's explanation that he signed the mentioned statement as he was threatened and put under pressure to do so by the penitentiary administration in order not to face adverse consequences.

8.4 Taking into account the above-mentioned considerations, the Committee notes that it is uncontested that the complainant was in police detention at the time he claims he was subjected to torture and sustained serious injuries. The State party has also not refuted the complainant's allegation to the effect that his apprehension and subsequent police detention remained undocumented for at least two days, and that he was not represented by a lawyer during this period of time. Nor has it contested the fact that the complainant's mother had requested, on two occasions, the administration of the IVS to provide her with a medical report about the complainant's medical condition at the time of his admission to the IVS; however, the Head of the IVS issued her only a brief reply stating that the complainant had no claims and that no bodily injuries were disclosed upon admission.[10] In addition, it remains uncontested that the complainant and his mother complained, both, throughout the pre-trial investigation and in court, about the complainant's ill-treatment by the police officers of the CDIA. In this context, the Committee notes that the State party has not provided comprehensive explanations concerning the concrete manner in which the claims in question were addressed by its competent authorities. Furthermore, the Committee notes that the State party has not provided the complainant's medical records attesting the complainant's state of health upon his admission to IVS and corroborating the State party's statement that no injuries had been established on him. Under these circumstances, and in light of the detailed account which the complainant has given of the ill-treatment to which he was subjected to force him confess guilt, and given that no objective evidence in the

[10] See para. 2.10 above.

form of medical documentation was presented by the State party to disprove the complainant's allegations concerning the inflicted injuries, as well as, in light of the information and documents on file, the Committee concludes in the present case that due weight must be given to the complainant's allegations.[11] The Committee further concludes that the facts as presented reveal that the manner in which the complainant was treated at the early stages of his detention by police, who carried out the investigation during that time and resulted in the complainant's forced confessions, in the absence of a lawyer, amount to a violation, by the State party, of article 1 of the Convention, read together with article 2, paragraph 1, of the Convention, due to the authorities' failure to prevent and punish acts of torture.

8.5 The Committee notes that the complainant claims that no prompt, impartial or effective investigation has been carried out into his torture allegations and that those responsible have not been prosecuted, in violation of articles 12 and 13 of the Convention. The Committee notes that, although the complainant reported the acts of torture shortly after their occurrence when a prosecutor of the Rudny City Prosecutor's Office visited the detention facility where the complainant was held, a preliminary inquiry was initiated only after approximately one month, when the Rudny City Prosecutor's Office informed the complainant's mother that her complaint was forwarded to the RDIA for examination. Furthermore, both the RDIA and the CDIA repeatedly refused to initiate criminal proceedings, due to lack of evidence. The complainant also claims that, in fact, no appropriate investigation was carried out in his case, since police officers, i.e. interested persons, failed to conduct a comprehensive investigation. In addition, the investigation into his allegations lasted for about two and a half years and was never conducted by an independent authority. His complaints concerning the facts of torture before the courts were also disregarded; no investigation was initiated and no criminal responsibility was attributed to those responsible.

8.6 The Committee recalls that an investigation in itself is not sufficient to demonstrate the State party's compliance with its obligations under article 12 of the Convention if it can be shown not to have been conducted impartially.[12] In this respect, it notes that in this case, the investigation was entrusted to the Criminal Department of the Department of Internal Affairs of Rudny City (CDIA) and the Department of Internal Security of the Department of Internal Affairs of the Kostanai Region (RDIA), i.e. the same institution where the alleged torture had been committed and an institution under the same chain of command. In this context, the Committee recalls its concern that preliminary examinations of complaints of torture and ill-treatment by police officers are undertaken by the Department of Internal Security, which is under the same chain of command as the regular police force, and consequently do not lead to impartial examinations.[13]

8.7 The Committee further recalls that article 12 requires that the investigation should be prompt and impartial, promptness being essential both to ensure that the victim cannot continue to be subjected to such acts and also because in general, unless the methods employed have permanent or serious effects, the physical traces of torture, and especially of

[11] See for example communication No. 207/2002 (CAT/C/33/D/207/2002), *Dimitrijevic v. Serbia and Montenegro*, decision of 24 November 2004, para. 5.3; communication No. 172/2000 (CAT/C/35/D/172/2000), *Dimitrijevic v. Serbia and Montenegro*, decision of 16 November 2005, para. 7.1.

[12] See communication No. 257/2004 (CAT/C/41/D/257/2004), *Kostadin Nikolov Keremedchiev v. Bulgaria*, decision of 11 November 2008, para. 9.4.

[13] See Concluding observations regarding the second periodic report of Kazakhstan, United Nations Document CAT/C/KAZ/CO/2, 12 December 2008, para. 24.

cruel, inhuman or degrading treatment, soon disappear.[14] In this case a preliminary investigation was started after more than a month from the reported facts of torture on 17 and 18 July 2008. This investigation relied heavily on the testimony of the alleged perpetrators – police officers, who denied any involvement in the torture, but attached no or little weight to the complainant's and his relatives' statements. In this regard, the Committee notes that, according to the information on file, the complainant himself was never questioned by any officials regarding his ill-treatment; no medical-forensic examination was performed on him. Consequently, it was refused to initiate criminal proceedings and no criminal charges were brought against the alleged perpetrators, due to lack of evidence. As a result, no remedy could be provided to the complainant.

8.8 In these circumstances and in light of the materials before it, the Committee concludes that the State party has failed to comply with its obligation to carry out a prompt and impartial investigation into the allegations of torture or to ensure the complainant's right to complain and to have his case promptly and impartially examined by the competent authorities, in violation of articles 12 and 13 of the Convention.

8.9 With regard to the alleged violation of article 14 of the Convention, the Committee notes that it is uncontested that the absence of criminal proceedings deprived the complainant of the possibility of filing a civil suit for compensation since the right to compensation for torture arises only after conviction of those responsible by a criminal court in the State party. The Committee recalls that article 14 of the Convention recognizes not only the right to a fair and adequate compensation, but also requires States parties to ensure that victims of torture obtain redress. The redress should cover all the harm suffered by the victim, including restitution, compensation, rehabilitation of the victim and measures to guarantee that there is no recurrence of the violations, while always bearing in mind the circumstances of each case.[15] The Committee considers that, notwithstanding the evidentiary benefits to victims afforded by a criminal investigation, civil proceedings and victims' claims for reparation should not be dependent on the conclusion of a criminal proceeding. It considers that compensation should not be delayed until establishment of criminal liability. Civil proceedings should be available independently of criminal proceedings and necessary legislation and institutions for such civil procedures should be in place. If criminal proceedings are required under domestic law to take place before civil compensation can be sought, then the absence or delay of those criminal proceedings constitute a failure on behalf of the State party to fulfil its obligations under the Convention. The Committee emphasizes that disciplinary or administrative remedies without access to effective judicial review cannot be deemed to constitute adequate redress in the context of article 14. In light of this, and in the circumstances of the present case, the Committee concludes that the State party is also in breach of its obligations under article 14 of the Convention.[16]

8.10 As to the alleged violation of article 15 of the Convention, the Committee observes that the broad scope of the prohibition in article 15 of the Convention, proscribing the invocation of any statement which is established to have been made as a result of torture as evidence "in any proceedings", is a function of the absolute nature of the prohibition of torture and it implies an obligation for States parties to ascertain whether or not statements admitted as evidence in any proceedings for which it has jurisdiction have been made as a

[14] Communication No. 59/1996 (CAT/C/20/D/59/1996), *Encarnación Blanco Abad v. Spain*, decision of 14 May 1998, para. 8.2.

[15] See communication No. 269/2005 (CAT/C/39/D/269/2005), *Ali Ben Salem v. Tunisia*, decision of 7 November 2007, para. 16.8.

[16] See, e.g., communication No. 207/2002 (CAT/C/33/D/207/2002), *Dimitrijevic v. Serbia and Montenegro*, decision of 24 November 2004, para. 5.5.

result of torture.[17] In this connection, the Committee observes that, in the present case, the national courts failed to address adequately the complainant's repeated claims regarding his forced confessions. In the absence of any other pertinent information in this regard on file, the Committee considers that the State party's authorities have failed to duly ascertain whether or not statements admitted as evidence in the proceedings have been made as a result of torture. In these circumstances, the Committee concludes that the State party has also breached its obligations under article 15 of the Convention.

9. The Committee, acting under article 22, paragraph 7 of the Convention, is of the view that the facts before it disclose violations of article 1 in conjunction with article 2, paragraph 1; and of articles 12; 13; 14; and 15, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

10. The Committee urges the State party to conduct a proper, impartial and independent investigation in order to bring to justice those responsible for the complainant's treatment, to provide the complainant with full and adequate reparation, including compensation and rehabilitation, and to prevent similar violations in the future. Pursuant to rule 118, paragraph 5, of its rules of procedure, the State party should inform the Committee, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the present decision.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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[17] See e.g. communication No. 219/2002 (CAT/C/30/D/219/2002), *G.K. v. Switzerland*, decision adopted on 7 May 2003, para. 6.10.